App.F.IX-4]

1925-6.

File No. G.F. 40-25

Previous References. (G.F.)

Serial Nos. 14 & 26

Later references.
G.F. 40-25-51 & 63.
G.F. 24-29-104

GENERAL & REVENUE SECRETARIAT

Serial Nos. 2.

Part B for November 1925

SUBJECT

Requests orders as to the procedure to be adopted by this office in regard to the acceptance of endorsements by Guardians.

Short 26 To The Comptroller to Govt.

No. FC 3063 dated 30th Nov: 1925

Issues instructions in regard to the acceptance of endorsements by Guardians

13844

General and Revenue Secretariat

GV File No. 40 of 1925.

[App. F. III—2

Serial No

From the comptroller

No 924 S. L. dated 7th Octr 1925

Requests in the circumstances explained orders as to the procedure to be adopted by this office in regard to the acceptance of endorsements by guardians.

(1) According to the existing practice the comptr states that a certificate of birth or other evidence of the age of the minor is being called for in the case of endorsements on S. L bonds by guardians on behalf of minors. and that it is not possible for this office to satisfy at the time of Sentrenissy The Enq whether the endorsement of the guardians was made when they had the power to do so —

(2) Now he wants to know whether the Accts office should go further & satisfy itself as to the validity of the endorsement by getting particulars as to the date of birth of the minor and the date of the endorsements.

3 The present practice in the Public Debt office madras is given in the enclosure to the Comptrollers letter. This question is stated to be engaging the consideration of the controller of Currency and its decision may perhaps be awaited.

4 The point is what are the

Subd 13/10

Note—Contn. Sheet

Serial No

safe guards necessary to see that an endorsement on behalf of a minor by his guardian is valid and can be acted upon.

5 Whether or no the guardian is a natural guardian having power to negotiate or is a 'duly appointed' guardian with power to negotiate are points which of course the Comptroller is bound to investigate and which he is doing now before recognising the authority of a guardian either to draw interest or to negotiate bonds.

6 The question is whether at the time of recognising the guardian's endorsement the Comptroller should ascertain whether 'the minor is still alive'. This question arose since in another Savings Bank case it was decided (I think) that when a minor died the guardian had no power to appropriate the moneys without obtaining a Succession cert. If so if the minor holder of a Govt Security be dead the guardian has no right to negotiate. Then in order to make sure whether the guardian has any right or no to negotiate is the Comptr to get proof of continued existence of the minor every time a security endorsed by the guardian comes to him / and whether (It should also enquire) at the time of negotiation the minor had not attained majority

The Public Debt office Madras from whom the Comptroller consulted as regards the practice obtaining there state that they are

Serial No

not insist him on proof of continued existence of minors because if they made a practice of calling for evidence of continued existence of minors in any one case omitted to do so they may be held liable by default. It is also stated that the question is under the consideration of the Controller of Curry

) The P. D.O. madras are evading the issue - The issue is 'Is the Comptroller bound to ascertain that the minor is alive or in other words if a minor be dead & the Comptroller has no notice of death, would he be liable to answer to the minor's successors by recognising the endorsement of the guardian'

8 This is a legal question & may perhaps be referred to Ld Secy for opinion & remarks

Ba
11/10

Fin Secy 9 forwarded for favour of advice.

Mrs
2nd 10 25

Secy Land Dept
With compts

10 The answer to the issue raised is not easy. The guardian has power to act only during the minority of the ward & his power ceases when the ward dies.

The question is whether a person dealing honestly with a guardian is discharged from liability in cases of forgery or misrepresentation committed by the guardian.

Serial No

The form of the certificate issued to a guardian is given at page 369 of the Civil Digest.
The period of minority is mentioned in such certificate. Hence there will be no difficulty in finding out whether the minor has still continued to be a minor at the date of endorsement provided the office has entered the period of his minority in the register. If the office neglects to notice this at the time of ~~registering~~ registration in the office a difficult question may arise as to bona fides, ~~or~~ or want of care & attention in cases of fraud committed by the guardian. It is therefore safe to enter these particulars in the register.

Secondly whether the ~~office~~ Comptroller will be liable to answer to the claim of a minor's successor in case the ~~payment~~ ~~is made to~~ of recognising the endorsement made after the death of the minor.

Under the rules framed by the Ch. Ct, it is the duty of the guardian to report the death of the minor to the Court & to deliver the properties of the minor to the ~~Court~~ legal heir. (vide rule XIII. at page 156, Civil Vol I Rules & Forms)
Invariably ~~sureties~~ are taken by the Court before the grant of a certificate.
~~Any~~ Sureties will be liable to make good the loss sustained ~~by the ward~~ by the guardian. The Govt may invoke the aid of Court to recover the loss from sureties.

Note—Contn. Sheet

81404/5

General and Revenue Secretariat

[App. F. III—2

File No. 40 of 1928.

Serial No

The presumption of law is that a certificated guardian has a right to act on behalf of the ward & that no presumption of death of the minor is made until the certificate is revoked.

Hence the Comptroller acting bonafide & in due course of business may not be held liable in case of any fraud committed by the guardian.

If the succession of the minor has allowed the guardian to act as a guardian after the death of the minor, he may be estopped from denying his title.

For these reasons I am inclined to the view though not without doubt that in cases of recognising the endorsements made after the death of the minor the Comptroller may not be held liable.

For Sec'y
with Comp'ts

8/4
12/11

Cus
13/11

14 NOV 1925

The dt'd secy has noted on the cases of certificated guardians & not natural guardians. Before issue any orders the file may perhaps be sent up to the Comptroller to ascertain whether a reply as above would meet his questions.

Ba

Dd Secy

14 The Cases mentioned in the 14/11 Compt's letter are those of certificated guardians and the opinion of the Legal Secy may be communicated in full in reply to the Memo 17.11.25 Ba

The compt may be requested to have a complete and up to date statement of claims raised & settled in connection with the estate of the late ... the case relating to Secretts Memo

Note—Contn. Sheet

Serial No	
16	A draft in accordance with the legal opinion is put up for approval mom 27/11/25 17 ~~Secy~~ Submit fair copy. B 28/11 18 Typed fair draft is submitted as per order mom 29/11/25 Secy 19 Secy 24/11 B Secy (mm 26.11.25 B To the comptroller No 7L 3063 d: 30.11.25 ~~State in the circumstances set forth that~~ with reference to sl 14. points out the ~~legal position~~ point of law in regard to the acceptance of endorsement by guardians.

B

15479

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE,

No. 924 S1/81

Bangalore, dated 7th October *1925*

From

T. SATYARAJ CHETTY, Esq., B.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore,
BANGALORE.

11 OCT. 1925

DIARY NO. 12854
1925 — 1926
G.F.
40-25

To

Rajakaryaprasaktha Diwan Bahadur
M.N.Krishna Rao, Esq., B.A.,
Financial Secretary to the Govt. of Mysore,
Bangalore.

14

8 OCT. 1925

SECTION

Sir,

I have the honor to state that, in the case of endorsements on State Loan Bonds by guardians on behalf of minors, a certificate of birth or other evidence of the age of the minor is being called for as also proof of the continued existance of the minor. It is however not possible for this office to satisfy itself at the time of scrutinising endorsements that endorsements by guardians were made when these guardians had the power to do so i.e., when the minor holder was still a minor, and was alive as the endorsements are not dated, and otherwise they are valid. All that this office can do is to satisfy itself that the guardian is one who has been duly appointed as such by a competent Court of Law, in token of which, the guardianship certificate will be obtained and registered in this office. Whether this office should further satisfy itself as to the validity of the endorsement by getting the above particulars as to the date of ~~birth~~ birth of the minor, the date of endorsement etc is a point upon which it seems desirable to come to an understanding so that my office may know definitely what its duties and responsibilities are in the matter and whether on behalf of Government it should be held responsible for any such invalid endorsements which, it would appear is the look-out of the parties interested to guard against. The present practice in the Public Debt Office, Madras, in this respect, is stated in letter No.M.4088 dated 29th May 1925, from that office (copy enclosed for information)

information). In these circumstances I request that orders of Government may be obtained as to the procedure to be adopted by this office regarding acceptance of endorsements by guardians.

I have the honor to be,
Sir,
Your most obedient servant,

J. Salisbury Chaytor
Comptroller.

LSR

Copy of letter No.M.4088 dated 29th May 1925, from the Secretary and Treasurer, Imperial Bank of India, Public Debt Office, Madras, to the Comptroller, Mysore Government, Bangalore.

========

With reference to your letter No.4428/S1 of the 5th instant I have the honor to inform you that proof of the continued existence of the minor is not insisted on by this office.

It has been held that if no notice of the death of the minor was given, liability would not be incurred by any untoward circumstances that might arise from such death, and that conversely if the Public Debt Office made a practice of calling for evidence of continued existence of minors, and omitted to do so in any one case, they might be held liable by default.

This question is at present under the consideration of the Controller of the Currency and should a decision be reached in contradiction to the foregoing opinion, I shall be pleased to advise you.

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Superintendent, Records Section,
Comptroller's Office.

MSR

G.F 40-25-26

H 3263/ dated 30.11.25

To

The Comptroller to the Government of
Mysore, Bangalore.

S i r,

With reference to your letter No.924 S.L. dated 7th October 1925 requesting orders as to the procedure to be adopted by your office in regard to the acceptance of endorsements by guardians, I am directed to state as follows:-

A guardian has power to act only during the minority of the ward and his power ceases when the ward dies. The question is whether a person dealing --- honestly with a guardian is discharged from liability in cases of forgery or fraud committed by the guardian. The form of the certificate issued to a guardian is given at page 369 of Civil Digest. The period of minority is mentioned in such certificate. Hence there will be no difficulty in finding out whether the --- minor still continued to be a minor at the date of endorsement provided the office has entered the period of his --- minority in the Register. If the Office neglects to notice this at the time of registration in the office a difficult question may arise as to bonafides or want of care and attention in cases of fraud --- committed by the guardian. It is therefor

therefore safe to enter these particulars in the Register.

As regards the other question i.e., whether Govt you will be liable to answer to the claim of a minor's successor in case of recognising the endorsement made after the death of the minor.- I am to point out that under the rules framed by the Chief Court it is the duty of the guardian to report the death of the minor to the court and to deliver the properties of the minor to the next heir (Rule XIII page 156 of Rules and orders Civil Vol.I) and that invariably -- surety is taken by the court before the grant of a certificate. These sureties will be liable to make good the loss sustained by the action of the guardian and ~~that~~ Government may ~~involve~~ invoke the aid of court to recover the loss from sureties. The presumption of law is that a certificated guardian has a right to act on behalf of the ward until the certificate is revoked and ~~that~~ no presumption of the death of the minor is made. If the ~~succession~~ or of the minor has allowed the guardian to act as a guardian after the death of the minor he may be estopped from denying his title.

~~In this connection~~ I am ~~further~~ to request that arrangements may be made to ~~you to be so good as to~~ manage to maintain ~~and forward~~ to ~~this office~~ furnish a complete and up-to-date statement of legal points raised and settled in --- connection with the administration of the law relating to securities.

~~relating to securities.~~

I have etc.

26/III/23

~~Sd.~~ H. Sec'y to Govt.